

NOV 08 2005

FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

2005 NOV -8 A 10: 07

MUR 5619

TENAFly DEMOCRATIC CAMPAIGN

2004

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

SENSITIVE

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

and are deemed inappropriate for review by the Alternative Dispute Resolution

Office are forwarded to the Commission with a recommendation for dismissal.¹ The

Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 5619 as a low-rated matter. In this case, the allegations centered on the placement of a Kerry Edwards sign adjacent to the respondents' billboard, which also contained a Kerry Edwards sticker. Additionally, a direct mail advertisement paid for by the respondents contained a check-off for "John Kerry for President," in addition to the other candidates running for state and federal office, but allegedly lacked an adequate disclaimer. In light of the de minimis nature of the allegations and reviewing the merits of MUR 5619 in furtherance of the Commission's priorities and resources relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

¹ This Office conferred with the Alternative Dispute Resolution Office and concluded the matter was inappropriate for further review.


RECOMMENDATION

The Office of General Counsel recommends that the Commission dismiss MUR 5619, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters. Closing the case as of this date will allow CELA and General Law and Advice the necessary time to prepare the closing letters and the case file for the public record.

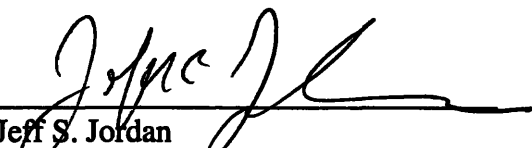
James A. Kahl
Deputy General Counsel

11/3/05
Date

BY:



Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration



Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Attachment:
Narrative in MUR 5619

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5 **MUR 5619**

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7 **Complainant:** Jeffrey K. Thompson
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9

10 **Respondents:** Tenaflly Democratic Campaign 2004 &
11 Dan Kornfeld, Treasurer
12 Kerry-Edwards 2004 Inc.
13 Patrick J. Rouse
14 Shama Haider
15

16 **Allegations:** The complainant alleges that New Jersey state candidates Patrick J. Rouse
17 and Shama Haider, operating under the name Tenaflly Democratic Campaign 2004
18 ("Tenaflly"), sponsored a direct mailer to residents in their borough that identified both
19 John Kerry for President and a congressional candidate without using an adequate
20 disclaimer. Additionally, the complainant alleges that a Kerry Edwards sign was placed
21 adjacent to a billboard featuring the Tenaflly candidates that also carried a Kerry Edwards
22 bumper sticker.
23

24 **Responses:** The Tenaflly candidates responded by noting that the mailing did contain a
25 disclaimer that stated "Your Local Democratic Candidates." They concluded that any
26 disclaimer violation was de minimis. Additionally, the Tenaflly candidates observed that
27 the Kerry Edwards sign that was placed next to their billboard was merely a yard sign.
28 The implication from their response is that the Tenaflly candidates were not responsible
29 for the placement of the Kerry Edwards yard sign. Kerry-Edwards 2004 denied any
30 involvement with the billboard or mailer.
31

32 **Date complaint filed:** November 26, 2004
33

34 **Responses filed:** January 18, 2005 and February 11, 2005

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